

STATE OF MICHIGAN
COURT OF APPEALS

CHARLINE HARRIS,

Plaintiff-Appellee,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellant.

UNPUBLISHED
February 18, 2003

No. 237141
Court of Claims
LC No. 99-017311-CM

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant appeals by leave granted the order denying its motion for relief from judgment, in which defendant sought the retroactive application of *Brown v Genesee Co Bd of Commr's*, 464 Mich 430; 628 NW2d 471 (2001). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is an inmate in a state correctional facility. On November 8, 1998, she was injured by an electrical shock she received from a light switch in her prison cell. She brought this personal injury action on June 2, 1999. Defendant filed multiple motions for summary disposition, asserting in part that the action was barred by governmental immunity because it did not fall within the public building exception. After the Supreme Court issued *Brown, supra*, defendant moved for relief from the orders denying summary disposition. The trial court denied the motion, finding that *Brown* established a new rule of law, and should be only applied prospectively.

Whether a judicial decision should be limited to prospective application is a question of law that is reviewed de novo. *Sturak v Ozomaro*, 238 Mich App 549, 559; 606 NW2d 411 (1999). Generally, judicial decisions are given full retroactive effect. *Pohutski v Allen Park*, 465 Mich 675, 696; 641 NW2d 219 (2002).

In determining whether a decision is to be applied prospectively, the court must consider whether the decision clearly established a new principle of law by overruling clear and uncontradicted case law. *Id.* The act of overruling a prior opinion, standing alone, is not dispositive of whether the later case should be applied only prospectively. If the decision does not overrule clear and uncontradicted case law, the product of which is a new principle of law, the decision must be applied retroactively. *Adams v Dep't of Transportation*, 253 Mich App

___; ___NW2d ___ (No. 230268, issued 10-11-02). In general, judicial decisions regarding governmental immunity are neither clear nor without contradiction. *Id.*, slip op 4.

Plaintiff asserts that prospective application is merited where the Supreme Court overruled *Green v Dep't of Corrections*, 386 Mich 459; 192 NW2d 491 (1971), which held that the public building exception applied to a prisoner, and that she relied on this clear past precedent. However, *Green* was not clear and uncontradicted, as reflected by the history of *Brown*. Two years before plaintiff filed her complaint, this Court held that a jail is not open to the public, and is not included in the public building exception. *Brown v Genesee Co Bd of Commrs*, 222 Mich App 363; 564 NW2d 125 (1997). The Supreme Court remanded the case for consideration in light of *Kerbersky v Northern Michigan University*, 458 Mich 525; 582 NW2d 828 (1998).

On remand, this Court reversed, finding that *Kerbersky* expanded the public building exception, and no longer required that the specific accident site be open to the public. *Brown v Genesee Co Bd of Commrs (On Remand)*, 233 Mich App 325; 590 NW2d 603 (1998). The Supreme Court reversed the decision of this Court, finding that *Green, supra*, offered no analysis to support a finding that a prisoner is a member of the public. 464 Mich at 439, n 8.

Although the Supreme Court did not address the retroactivity of its decision in *Brown*, it has remanded several cases for reconsideration in light of *Brown*, indicating an intent to apply the decision retroactively. *Allen v Wayne Co*, 465 Mich 873; 634 NW2d 359 (2001); *Maskery v Bd of Regents of the University of Michigan*, 465 Mich 897; 636 NW2d 144(2001). Where *Brown* did not overrule clear and uncontradicted law, it should be applied retroactively.

Reversed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray